

Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:B01
PLR-142960-07

Date:
March 26, 2008

LEGEND

X =

D =

Year 1 =

Year 2 =

Year 3 =

Year 4 =

State =

Dear

This responds to a letter dated September 20, 2007, and subsequent correspondence, submitted by X, requesting relief under § 1362(b)(5) of the Internal Revenue Code.

FACTS

According to the information submitted, X was incorporated in D under the laws of State. X has not filed an election to be treated as an S corporation for Federal tax purposes. X filed Form 1120 (C corporation return) for Year 1 and Year 2. X did not file

any tax returns for its following years until Year 4, when it filed a late Form 1120S for Year 3.

LAW AND ANALYSIS

Section 1362(a) provides that a small business corporation may elect to be an S corporation. Section 1362(b) provides the rule on when an S election will be effective.

Section 1362(b)(2) provides that if an S election is made within the first two and one-half months of a corporation's taxable year, then the corporation will be treated as an S corporation for the year in which the election is made. If the election is made after the first two and one-half months of a corporation's taxable year, then the corporation will not be treated as an S corporation until the taxable year after the year in which the S election is made.

Section 1362(b)(5) provides that if no election is made pursuant to § 1362(a), or, if made, the election is made after the date prescribed for making such an election, and the Secretary determines there was reasonable cause for the failure to timely make the election, then the Secretary may treat such election as timely made for such taxable year and effective as of the first day of that year.

CONCLUSION

Based solely on the information submitted and the representations made, we conclude that X has not established reasonable cause for not making a timely S election effective for D. Accordingly, relief under § 1362(b)(5) is denied.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Sincerely,

Dianna K. Miosi

Dianna K. Miosi
Chief, Branch 1
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2)

Copy of this letter

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cc: